

HON. ANTONIO J. VILLEGAS, IN HIS CAPACITY AS MAYOR OF MANILA, AND GERARDO G. TAMAYO, IN HIS CAPACITY AS CHIEF OF POLICE OF MA-NILA, PETITIONERS, VS. HON. ABELARDO SUBIDO, IN HIS...*G.R. No. L-31004. January 08, 1971*

Ponente: BARREDO, J.

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Petition filed by Antonio J. Villegas, as Mayor of Manila, and Gerardo G. Tamayo, to whom said Mayor had extended an appointment as Chief of Police of said city, for mandamus to compel the respondents City Auditor and City Treasurer to approve, pass in audit and pay said pe-titioner Tamayo's salaries as such Chief of Police without regard to the negative action taken on his said appoint-ment by the respondent Commissioner of Civil Service and for prohibition to enjoin the latter from interfering with said appointment, except to ministerially record and note the same, and/or enforcing his said negative action thereon, this being allegedly without or in excess of jurisdiction or a grave abuse of discretion. Only the respondent Com-missioner has filed an answer, the other two respondents having limited themselves to making manifestations to the effect that they are neither supporting nor contesting the questioned appointment.

From the myriad of facts alleged by the parties, only the following undisputed ones are material to the proper disposition of this case:

On September 5, 1969, a month after Republic Act 6040, the latest amendment to the Civil Service Act of 1959 took effect, Mayor Villegas extended to petitioner Ta-mayo a second appointment as permanent chief of police of Manila effective August 4, 1969.[1] In his letter of trans-mittal of said appointment to respondent Commissioner "for notation and record of that Commission", the Mayor stated:

"Section 3 of Republic Act No. 6040 amended Section 5 of the Civil Service Act of 1959 (Rep. Act 2260) by provid-ing that 'heads of departments created in charters of cities' and 'officers and employees appointed to positions for which the law prescribes specific special qualifications for appointment' shall likewise be embraced in the non-competitive service. [Sec. 5 (f) and (i), Rep. Act 2260 as amended by Rep. Act 6040]

x x x x x

"Hence, it is now beyond dispute that the Chief of Police of Manila be-longs to the non-competitive service, since the Chief of Police of Manila is the head of the Manila Police Depart-ment created in the Revised Charter of the City of Manila (Secs. 20 and 34, Rep. Act 409 as amended) and the Po-lice Act of 1966 'prescribes specific special qualifications for appointment' as chief of a city police agency (Sec. 10, Rep. Act 4864).

"Pursuant to these amendments to the Civil Service Act of 1959, I have on this date extended an appointment as regular and permanent Chief of Po-lice of Manila with compensation at the rate of P24,000.00 per annum ef-fective August 4, 1969 to Mr. GERARDO G. TAMAYO who admittedly possesses the the minimum

specific special qualifications for appointment as chief of a city police agency, since he holds a bachelor's degree (LLB, 1951) and has served in the Manila Police Department with the rank of captain for nearly ten years (from August, 1957 to February, 1967)."

On even date, separate communications were sent by the Mayor to respondent City Auditor to approve and to respondent City Treasurer to pay the corresponding differential and salary vouchers of petitioner Tamayo as permanent chief of police as of August 4, 1969.

In a 1st indorsement dated September 12, 1969, respondent Commissioner "disapproved" the above appointment arguing as follows:

"It appears that the said appointment of Mr. Tamayo was issued on the basis of the gratuitous and erroneous conclusion that the position of Chief of Police in the City of Manila now falls under the non-competitive service. Although Sections 5(f) and 5(i) of Republic Act No. 2260, as amended by Republic Act No. 6040 have placed 'heads of departments created in the charter of cities' and 'officers and employees appointed to positions for which the law prescribes specific special qualifications' in the non-competitive service, the same, however, are provisions of a general law which, under the settled rule of statutory construction, cannot prevail over specific provisions of special laws. Republic Act No. 4864 is a special law that governs appointments to positions in police forces or agencies such as the position of Chief of Police in the City of Manila. Sections 10 and 11 of Republic Act No. 4864 provide as follows:

'SEC. 10. Minimum qualifications for appointment as Chief of Police Agency.- No person may be appointed chief of a city police agency unless he holds a bachelor's degree from a recognized institution of learning and has served in the Armed Forces of the Philippines or the National Bureau of Investigation, or has served as chief of police with exemplary record, or has served in the police department of any city with the rank of captain or its equivalent therein for at least three years or any high school graduate who has served as officer in the Armed Forces for at least eight years with the rank of captain and/or higher.

'No person may be appointed chief of a municipal police agency unless he holds a bachelor's degree from a recognized institution of learning or any high school graduate who has served the police agency of a city or a municipality or has served as officer in the Armed Forces for at least five years from the rank of lieutenant or detective lieutenant and/or higher.

'Where no civil service eligible is available, provisional appointment may be made in accordance with Civil Service Law and rules: Provided, That the appointee possesses the above educational qualifications: Provided, further, That in no case shall such appointment extend beyond six months, except for a valid cause, and with the approval of the Civil Service Commission.

'SEC. 11. Qualification for permanent appointment; Preference; Temporary appointment.- Except as herein provided, no person shall be permanently appointed to any position in the local police force or agency unless he has qualified in an appropriate or police service examination. In the absence of civil service eligibles preference for appointment shall be given to candidates who have completed police training courses abroad sponsored by the NEC-AID or any other sponsoring agency, or the police training courses of the Philippine Constabulary School or the National Bureau of Investigation Academy, or any public or private police training school accredited by the government, or have completed military trainee instructions, or are officers or enlisted men who have been honorably discharged from the Armed Forces of the Philippines.

'Where no civil service eligible is available, provisional appointment may be made in accordance with Civil Service Laws and rules: Provided, That in case of a patrolman-appointee, he shall possess at least the general qualifications provided for in Section 9 of this Act.'

"It will be noted from the aforequoted provisions that appointment to any position in the police force or agency requires 'prior qualification in an appropriate or police service examination.' This includes the position of Chief of Police in the City of Manila, appointment to which, therefore, requires prior qualification in an appropriate or police service examination. These provisions have not been repealed either expressly or impliedly by Republic Act No. 6040 which amends Republic Act No. 2260. On the contrary, Republic Act No. 2260 as amended by Republic Act No. 6040 and Republic Act No. 4864, the Police Act of 1966, complement each other. Section 4 of Republic Act No. 2260 as amended specifically defines the positions under the competitive service as follows: 'The competitive or classified service shall include positions for appointment to which prior qualification in an appropriate examination is required.' On the other hand, Sections 10 and 11 of Republic Act No. 4864 require qualification in an appropriate or police service examination for permanent appointment to position in the police force. Undoubtedly, the position of Chief of Police is in the competitive service. That Congress never intended to alter the nature of positions in the police service as falling under the competitive service is even made more patent by the penultimate paragraph of Section 23 of Republic Act No. 6040 as amended, which provides as follows: 'The Police Commission shall give the appropriate examination for officers and members of local police forces x x x.' This clearly shows the intention of Congress of retaining all positions (including the position of Chief of Police) in a police force or agency in the competitive service.

"Furthermore, there is no showing that the City Mayor in issuing Mr. Tamayo's appointment, observed the provisions of Section 4 of Republic Act No. 5185 which requires that appointment to positions of head and assistant head of local offices, without qualification as to whether they are in the competitive or non-competitive service, shall be made from a list of five ranking and qualified eligibles to be certified by the Commissioner of Civil Service. This procedure in filling such positions in local offices was held mandatory by the Supreme Court in the case of *Pineda vs. Claudio, et al.*, G.R. No. L-29661, May 13, 1969, so much so that it held that the Commissioner of Civil Service correctly issued his Memorandum Circular No. 21, s. 1968, implementing said Section 4 of Republic Act No. 5185.

"Finally, it bears emphasis to state that in Civil Case No. 75105, entitled '*Antonio J. Villegas, et al. vs. Abelardo Subido*', the Court of First Instance of Manila in its restraining order dated December 14, 1968 enjoined the parties in said case including the City Mayor of Manila, 'to refrain from disturbing the status quo.' Precisely, the matter in issue in said case are the legality of Mr. Tamayo's appointment and the efficacy of his Chief of Police eligibility. It is plain that the act of the City Mayor in issuing Mr. Tamayo's appointment at P24,000.00 per annum has disturbed the status quo, in contravention of the restraining order. Moreover, this appointment of Mr. Tamayo appears to be a mere adjustment in salary to the same item. It is inconceivable how such an appointment can be legally extended when the main or original appointment to the same position is the subject of a pending court case precisely to determine its legality. Such action 'begs the question'.

"From all the foregoing and pursuant to Section 693 of the Revised Administrative Code, this Office finds and declares that the position of Chief of Police of the City of Manila belongs to the competitive service. Consequently and considering further that his Chief of Police eligibility is subject to certain conditions which to-date have not been fulfilled or met, the appointment of Mr. Gerardo G. Tamayo as Chief of Police of Manila is disapproved."

On the same date, in simultaneous but substantially identical communications, respondent Commissioner notified respondents City Auditor and City Treasurer of his above action and since the salary differential covering the period from August 4, 1969 to September 15, 1969 had already been paid when the Commissioner's advice was received by these respondents, a demand was made upon Tamayo to refund the same; and albeit said demand has been resisted by Tamayo, the City Auditor informed the Commissioner and advised Tamayo that in regard to the appointment in question he (the Auditor) "will henceforth be guided by the aforesaid decision of the Civil Service x x x as long as the same is not set aside by the competent authority x x x." (Annex K, Petition) Hence this special civil action now before Us.

Accordingly, the main legal question submitted for Our resolution revolves around the effect of the enactment of Republic Act 6040, upon the power of the Commissioner of Civil Service to act upon appointments of heads of police departments created in charters of cities, having in view the other related provisions of the Civil Service Act of 1959 itself, as amended, and of the Decentralization Act (Republic Act 5185) as well as Republic Act 4864, otherwise known as the Police Act of 1966.

Respondent Commissioner does not question the power of petitioner Villegas to appoint the chief of police of Manila nor the fact that the police department of the city was created in its charter. The burden of the Commissioner's position in respect to the basic question herein is that, notwithstanding the provisions of Section 3 of Republic Act 6040 including in the non-competitive service the following:

"(f) heads of departments created in charters of cities x x x; (and)

"(i) officers and employees appointed to positions for which the law prescribes specific special qualifications for appointment",

chiefs of police of chartered cities, including those in which the respective police departments have been created in their charters, have not ceased to be in the competitive service in view of the requirement of civil service eligibility for said position commonly imposed by Section 11 of the Police Act of 1966 and Section 4 of the Decentralization Act. On the other hand, the petitioners contend that all the provisions of the prior laws cited by respondent Commissioner, as aforesaid, have been amended, if not repealed by various provisions of Republic Act 6040 and, in any event, since Section 10 of the Police Act of 1966 prescribes specific special qualifications for the position of Chief of Police of chartered cities, the said position has also been placed in the non-competitive service by the above-quoted provision of paragraph (i) of Section 3 of Republic Act 6040. In other words, the principal specific questions We are called upon to decide are: (1) to what extent, if at all, have the aforequoted provisions and other related provisions of Republic Act 6040 amended, modified or repealed Section 11 of the Police Act of 1966[2] and Section 4 of the Decentralization Act [3] insofar as chiefs of police departments created in the charters of cities are concerned and (2) whether or not paragraph (i) of Section 3 of Republic Act 6040, quoted above, contemplates the position of chief of police of cities for which Section 10 of the Police Act of 1966[4] prescribes specific special qualifications.

After careful and mature consideration of the legal provisions and principles applicable to the facts of this case as well as the arguments of the parties in their respective pleadings and memoranda, We are convinced and so hold that petitioner Tamayo's questioned appointment as Chief of Police of Manila is in order and, therefore, the herein petition should be granted.

On the question of whether or not "the heads of departments created in charters of cities" referred to in Section 5(f) of the Civil Service Law as amended by Republic Act 6040 should be deemed to include the chiefs of police, much of the argumentation of the parties center on which provision should be considered as general in its scope and which as special or particular, the just mentioned one or those of Sections 10 and 11 of the Police Act and Section 4 of the Decentralization Act, and differing as they do in their respective premises, albeit invoking the same rule of statutory construction to the effect that special or particular legal provisions should prevail over general ones, they have naturally arrived at exactly opposite conclusions. We need not choose between their opposing predicates. As We see the problem before Us, the perspective for its resolution is much deeper and broader than the reach of any artificial and abstract rule of statutory construction.

It is an unquestionable fact of contemporary political development in our country that the march towards further enlargement of local autonomy is irreversible. Lessons from the experience in other countries wherein overall progress has been remarkably attained, and, equally, the intrinsic merits of local rule as to more or less purely

local matters, lend force to the legislative moves here enlarging the powers of our local authorities. Decentralization of government authority which practically means the same thing as local autonomy, if covered by separate legislation, has similar, if not identical, justification. On the other hand, the deplorable picture of peace and order conditions throughout the country has made the objective of placing "local police service on a professional level" (Section 2, Police Act) an imperative necessity. None can seriously deny that the inefficacy and continuing deterioration of the police protection which our people are getting now in most of our communities has been due mostly to the admixture of politics and nepotism in the appointments as well as in the control and supervision of the members of the local police departments. Had the Police Act not been approved, it is not difficult to imagine how much worse peace and order conditions would have been and, consequently, how much more impairment the faith of the citizenry in the impartiality of law enforcement would be suffering by now. It is thus of utmost importance that in the construction and implementation of any political measure, even if intended to enhance local autonomy, the imperiousness of the objectives of the Police Act should never be lost sight of.

It is in the crucible of these realities and ideals and their implications that the solution of the pivotal issue in this case must be forged. Put plainly, the question is, is the exclusion of the chief of police of a chartered city from the competitive service or, stated otherwise, his inclusion in the non-competitive service of the civil service a concession to local autonomy that will necessarily result in the detriment to, if it will not erode dangerously, the cause of professionalism in the local police service? We are of the considered view that it will not. Laying aside the legislative intent of not excluding any department head apparent from unqualified reference in the text of the provision to "heads of departments", naturally meaning all such heads, We perceive no reason why, in the light of the other considerations hereunder to be discussed, the seemingly conflicting provisions cannot be reconciled without sacrificing the muchly-desired objectives of either of them.

The pertinent provision of the Decentralization Act reads thus:

"In cases of vacancies in the offices of heads and assistant heads of local offices, the governor or mayor shall fill them by appointment from a list of the five next ranking eligible and qualified persons as certified by the Civil Service Commissioner: Provided, That these five persons shall have stated beforehand that they will assume the position, if appointed."

Since this provision refers, on the one hand, to all "heads and assistant heads of local offices", and, on the other, Section 5(f) of the Civil Service Act, as already noted, expressly mentions all "heads of departments created in charters of cities", who are unquestionably among the "heads of local offices", the conclusion is inescapable that the requirement of civil service eligibility found in the Decentralization Act for heads of local offices must be deemed to have been removed by Republic Act 6040, a subsequent enactment, insofar as "heads of departments created in charters of cities", are concerned. Obviously, this is a step towards more local autonomy, if limited as yet to "heads of departments created in charters of cities" and not extended to all heads of local offices, not even of those in all chartered cities. The reason for it is not difficult to find. Except as to the reference to the requirement of eligibility then in force, Justice Castro's rationalization in favor and justification of the broadening of local autonomy in the matter of selection and appointment by the local executives of their subalterns in *Pineda vs. Claudio*, 28 SCRA 34, 46-47, is fully in line with progressive political thinking:

"x x x It is just as necessary, in order for public administration to be dynamic and responsive to the needs of the times, that the local executive be allowed the choice of men of his confidence, provided they are qualified and eligible, who in his best estimation are possessed of the requisite reputation, integrity, knowledgeability, energy and judgment. After all, it is the local executive, more than anyone else, who is primarily responsible for efficient governmental administration in the locality and the effective maintenance of peace and order therein, and is directly answerable to the people who elected him. x x x"

And very pertinently to the very issue before Us in this case, Justice Castro's above opinion asserts: "Nowhere is this more true than in the sensitive area of police administration."

On these premises, the question that naturally suggests itself is, what happens then to professionalism in the local police? We must assume that the legislature has not overlooked this point. From all that appears, the legislature has seemingly been convinced that the danger to the efficiency and quality of the local policemen posed by making the position of their chief non-competitive or by conferring upon the local executives the power to select and appoint such chiefs without regard to civil service eligibility is not as grave as to substantially defeat the objectives of the Police Act in regard to the local police forces as such or as a whole. To start with, the provision of Section 11 of the Police Act that –

"x x x no person shall be permanently appointed to any position in the local police force or agency unless he has qualified in an appropriate or police service examination. In the absence of civil service eligibles preference for appointment shall be given to candidates who have completed police training courses abroad sponsored by the NEC-AID or any other sponsoring agency, or the police training courses of the Philippine Constabulary School or the National Bureau of Investigation Academy, or any public or private police training school accredited by the government, or have completed military trainee instructions, or are officers or enlisted men who have been honorably discharged from the Armed Forces of the Philippines.

"Where no civil service eligible is available, provisional appointment may be made in accordance with Civil Service Laws and rules: Provided, That in case of a patrolman-appointee, he shall possess at least the general qualifications provided for in Section nine of this Act."

remains operative except only as to the Chief of Police.[5] In *Pineda*, We sanctioned in effect the separate legislative treatment of the position of Chief of Police, on the one hand, and the rest of the members of the local police force, on the other, by holding that notwithstanding that Section 17 of the Act expressly enjoins mayors to fill any vacancy in a local police agency "as provided for in this Act", (the Police Act) meaning, pursuant to its provisions only, the subsequent approval of the Decentralization Act modified said injunction insofar as the Chief of Police is concerned because of the explicit terms of Section 4 of the latter. It is indeed quite possible that the lawmakers, upon further reflection during the consideration of the Decentralization Act, arrived at the conclusion that in the interest of local autonomy and a more effective liaison and closer collaboration between the local executive and the chief of police under him, it is not really absolutely essential that the selection and appointment of the Chief of Police by the mayor should be as restricted as to practically tie the hands of the mayor only to the promotion of the officer next in rank.

Of course, it can be argued that said Section 4 merely widened the field from which the mayor may pick his chief of police to any in the list of twenty ranking officers, certified by the Commissioner of Civil Service as eligible for appointment either by promotion, transfer, reinstatement or certification of appropriate eligibles, composed of five from each category, instead of requiring him to peremptorily promote the officer next in rank contemplated in Section 23 of the Civil Service Act, as explained in *Pineda*, but it did not do away with the minimum requirement of appropriate civil service eligibility, as would be the case if Section 5(f), above referred to, were to be construed as petitioners propose. It being evident, however, as earlier noted, that the passage of the provision in question is along the same direction as the Decentralization Act, namely, to provide for more local rule, to acquiesce to respondent Commissioner's position in this case is to refuse to accord respect to a clear legislative mandate only on the ground that it may not be the wise thing, after all, something this Court cannot do because of, what is almost trite to repeat here, the fundamental principle of separation of powers on which our government rests, which does not permit the judiciary to inquire into the wisdom of any of the acts of the legislature and the Chief Executive which are plainly within the scope of their respective constitutional prerogatives. It is understandable, that with the requirements of Sections 9 and 11 of the Police Act being applied to all the other members of the

police department, the eligibility of the chief thereof, provided he also has the qualifications enumerated in Sections 9 and 10, may not really be as essential as the advantages that can be derived by allowing the Mayor to have a Chief of his own confidence. Besides, considering that the scope of the questioned provision is limited only to "heads of departments created in charters of cities", it is possible Congress may be trying the thing on an experimental basis, with the implicit reservation to take corresponding corrective measures should subsequent developments demand them.

In any event, the concession to local autonomy by the Police Act, even as to the matter here in issue, does not appear to be really complete and absolute. Section 10 of the Police Act provides:

"No person may be appointed chief of a city police agency unless he holds a bachelor's degree from a recognized institution of learning and has served either in the Armed Forces of the Philippines or the National Bureau of Investigation, or has served as chief of police with exemplary record, or has served in the police department of any city with the rank of captain or its equivalent therein for at least three years; or any high school graduate who has served as officer in the armed forces for at least eight years with the rank of captain and/or higher.

"No person may be appointed chief of a municipal police agency unless he holds a bachelor's degree from a recognized institution of learning or any high school graduate who has served the police agency of a city or a municipality or has served as officer in the Armed Forces for at least five years from the rank of lieutenant or detective lieutenant and/or higher.

"Where no civil service eligible is available, provisional appointment may be made in accordance with Civil Service Law and rules: Provided, That the appointee possesses the above educational qualification: Provided, further, That in no case shall such appointment extend beyond six months, except for a valid cause, and with the approval of the Civil Service Commission."

It will be noted that according to this provision, where no civil service eligible is available, the appointee must at least possess the educational qualifications prescribed by it, which necessarily include the actual training and experience in the military or police organizations therein mentioned. In this connection, it is Our considered opinion that, having in view the inevitability, in the light of progressive political thinking, of the extension of self-rule in the local level, so as to widen and enlarge the powers of selection and appointment by local executives of those who will assist them in the administration of local affairs, on the one hand, and the unquestionable desirability, nay, imperative necessity of keeping the local police forces on a professional level as much and as long as the law can be possibly construed to effectuate such professionalism, the situation where there is no civil service eligible is available contemplated in the above-quoted provision may be equated with the development brought about by Republic Act 6040 of eliminating altogether the requirement of civil service eligibility in the appointment of chiefs of police departments created in charters of cities, and We, therefore, hold that Republic Act 6040 does not do away, even with regard to chiefs of police in the cities contemplated in said Act, with the injunction of Section 10 of the Police Act that only those possessing the educational qualifications therein required may be appointed as such chiefs nor that of Section 9 regarding the moral, age, height, weight and other personal qualifications which must be possessed by any appointee to any position in the police force.

We reiterate that Section 17 of the Police Act definitely requires that vacancies in the police services must be filled "as provided for in this Act" and that the Act has a minimum requirement of qualifications and civil service eligibility under Sections 9 and 11 thereof. True, in *Pineda* We held that these requirements have been modified as to the chief of police by Section 4 of the Decentralization Act, and now We are holding here that as to chiefs of police in police departments created in charters of cities, civil service eligibility is no longer necessary. We are convinced, however, that, inasmuch as the moral, educational and eligibility requirements for the rest of

the whole body of the police forces or all the members thereof are still there, Congress, in placing the chiefs of police of these cities in the non-competitive service, could not have committed the absurdity, of, at the same time leaving the door wide open for the mayors of said cities to freely pick any Tom, Dick and Harry as his chief of police, in complete disregard of the ideals and objectives of the Police Act. Besides, after appointment, it must be borne in mind, the chief is still covered by all other provisions of the Civil Service Act as he is considered in the civil service, even if in the non-competitive class.

It is only in the sense just discussed that petition-ers' contention that Section 5(i) of the Civil Service Act may also be invoked in support of petitioner Tamayo's im-pugned appointment has merit; otherwise, petitioners' rationalization must fall. Petitioners maintain that inas-much as Section 10 of the Police Act prescribes specific special qualifications for appointment to the position of chief of police, and said Section 5(i) of the Civil Service Act has placed in the non-competitive service all "officers and employees appointed to positions for which the law prescribed specific special qualifications for appointment", all positions of chief of police belong now to the non-competitive service. The flaw in this line of reasoning lies simply in the obvious fact that the specific special qualifications prescribed in Section 10 are inseparably premised on the indispensable requirement of appropriate civil service eligibility imposed by Section 11 of the Act and implied even from the last paragraph of Section 10 which provides: "[W]here no civil service eligible is available, provisional appointment may be made in accordance with Civil Service Law and rules: Provided, That the appointee possesses the above educational qualification: Provided, further, That in no case shall such appointment extend beyond six months, except for a valid cause, and with the approval of the Civil Service Commission." In other words, the specific special qualifications referred to by petition-ers as prescribed in this section inseparably include civil service eligibility, hence they cannot be the ones contemplated in Section 5(i) of the Civil Service Law. Stated differently, Our ruling in regard to petitioners' contention under discussion is that the specific special educational qualifications prescribed in Section 10 of the Police Act are not the ones contemplated in Section 5(i) of the Civil Service Act as basis for making the position of chief of police non-competitive, but, on the other hand, even if said position has nonetheless become non-competitive by virtue of sub-paragraph (f) of the same section, as already explained above, still no person may be appointed chief of police unless he possesses the specific special educational qualifications and military or police service prescribed by Section 10 of the Police Act.

Since it is not denied that petitioner Tamayo possesses the qualifications prescribed by Section 10 of the Police Act, being a Bachelor of Laws and having served as captain of the Manila Police Department since 1957, and, moreover with respect to appointments to non-competitive positions, the only function of the Commissioner of Civil Service is to note and record the same, such that Rule VI Section 2(d) of the Civil Service Rules provides explicitly that "appointments to positions in the non-competitive service x x x shall likewise be made through the Commissioner for proper notation and record", in contrast to Section 2(a) which provides that "[A]ll appointments to positions in the competitive service shall be submitted to the Commissioner for approval", [6] the conclusion is inevitable that the disapproval of said petitioner's questioned appointment by respondent Commissioner has absolutely no legal basis.

As to the rest of the issues extensively and ably discussed by both parties, interesting as they are, We do not deem it necessary to pass on them now, in view of the conclusions We have arrived at above.

IN VIEW OF ALL THE FOREGOING, the herein petition is granted, the respondent Commissioner's disapproval of petitioner Tamayo's appointment as Chief of Police of Manila dated September 5, 1969 is declared to be without any legal force and effect, including the stopping of the payment of said petitioner's salaries and differential pay as such Chief of Police, and the order to Tamayo and respondents City Auditor and City Treasurer to effect reimbursement of whatever parts thereof have already been paid, and all the respondents are hereby

commanded to recognize and respect said appointment and otherwise act in conformity with the above opinion and this decision. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, and Villamor, JJ., concur. Fernando and Makasiar, JJ., did not take part.

[1] It appears that earlier petitioner Tamayo was first appointed by Mayor Villegas as Chief of Police of Manila but the incidents regarding the said appointment have no bearing herein.

[2] To be quoted in this opinion later.

[3] To be quoted in this opinion later.

[4] To be quoted in this opinion later.

[5] Section 9 of the Police Act provides:

"No person shall be appointed to a local police agency unless he possesses the following qualifications:

[1] He must be a citizen of the Philippines;

[2] He must be a person of good habits and moral conduct;

[3] He must be of sound mind and body;

[4] For appointment in the municipalities he must have at least completed high school, and for provinces and cities, at least completed two years college;

[5] He must have no criminal record;

[6] He must not have been dishonorably discharged from military employment or dismissed for cause from any civilian position in the government;

[7] He must not be less than twenty-three nor more than thirty-three years of age;

[8] He must be at least five feet, five inches in height in the case of provinces and chartered cities and five feet four inches in the case of municipalities; and,

[9] He must not weigh less than one hundred twenty pounds.

Persons who at the time of the approval of this Act have rendered at least five years of satisfactory service in a provincial, city or municipal police agency although they have not qualified in an appropriate civil service examination are considered as civil service eligibles for the purpose of this Act."

[6] Actually, section 16(h) of the Civil Service Act does not require approval by the Commissioner of appointments of whatever kind, even if it authorizes him to disapprove appointments to positions in the competitive service, within ninety days after submission thereof, only "where the appointees do not possess the corresponding eligibility."

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